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1 S. MITCHELL KAPLAN (SBN 095065)  
 2 BRYCE CARROLL (SBN 208593)  
 3 GORDON & REES LLP  
 275 Battery Street, Suite 2000  
 4 San Francisco, CA 94111  
 Telephone: (415) 986-5900  
 Facsimile: (415) 986-8054

5  
 6 STEPHEN E. RAY (*Pro Hac Vice*)  
 STEIN, RAY & HARRIS LLP  
 7 Stein Ray & Harris  
 222 West Adams Street, Suite 1800  
 8 Chicago, IL 60606  
 Telephone: (312) 641-3700  
 9 Facsimile: (312) 641-3701

10 Attorneys for Plaintiff  
 11 BOVIS LEND LEASE, INC. as assignee of  
 LNR-LENNAR BRANNAN STREET, LLC

12  
 13 UNITED STATES DISTRICT COURT  
 14 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

15 BOVIS LEND LEASE, INC. as assignee of  
 16 LNR-LENNAR BRANNAN STREET, LLC,

17 Plaintiffs,

18 vs.

19 MBH ARCHITECTS, INC. aka MCNULTY  
 BRISKMAN HEATH and DOES 1 through 150,

20 Defendants.

) Case No. C 075262

)  
 ) **BOVIS LEND LEASE, INC.'S**  
 ) **ANSWERS TO MBH ARCHITECT'S**  
 ) **FIRST SET OF SPECIAL**  
 ) **INTERROGATORIES**

1 PROPOUNDING PARTY: MBH Architects, Inc.

2 RESPONDING PARTY: Bovis Lend Lease, Inc.

3 SET NUMBER: One

4 Bovis Lend Lease, Inc. ("Bovis") by and through its attorneys, Gordon & Rees LLP and  
5 Stein, Ray & Harris LLP, hereby respond to MBH Architects, Inc.'s ("MBH") Interrogatories as  
6 follows:

7 **INTRODUCTORY STATEMENT AND GENERAL OBJECTIONS**

8 PLEASE TAKE NOTICE that Bovis has endeavored in good faith to respond to MBH's  
9 Interrogatories, Set One. As a general response to each interrogatory, Bovis states that its  
10 responses are made solely for the purpose of and in relation to this action. Each response is  
11 given subject to all appropriate objections (including, but not limited to, those of competence,  
12 relevance, materiality, propriety and admissibility) which would require the exclusion of any  
13 statement contained herein if the interrogatory were asked of, or any statement contained herein  
14 were made by, the witness present and testifying in court. All objections and grounds therefore  
15 are reserved for trial. Bovis has not completed its investigation of the facts relating to this case  
16 and has not completed discovery in this action. All responses contained herein are based only  
17 upon the information, which is presently available and specifically known to Bovis. Further  
18 discovery, investigation, review of records, research and analysis may establish new conclusions  
19 and legal contentions and reveal additional and further responses. Therefore, the following  
20 responses are given without prejudice to Bovis's right to produce evidence of subsequently  
21 discovered facts.

22 Except for the explicit facts admitted herein, no admissions of any nature whatsoever are  
23 to be implied or inferred. The fact that an interrogatory has been responded to herein should not  
24 be taken as an admission or an acceptance of the existence of facts set forth or assumed by such  
25 interrogatory or that the response constitutes evidence of any facts set forth or assumed. All  
26 responses are given and should be construed on the basis of present knowledge.

27 Without waiving any of the foregoing general responses and objections, the responses  
28

1 contained herein are made in good faith to supply as much factual information as is presently  
2 known, but should in no way prejudice Bovis with respect to further discovery, research or  
3 analysis.

4 SPECIFIC OBJECTIONS

5 1. Bovis objects to these Interrogatories to the extent that they seek information  
6 and/or documents subject to the attorney/client privilege, work product doctrine or any other  
7 applicable privilege, protection or immunity.

8 2. Bovis objects to these Interrogatories to the extent that they seek disclosure of  
9 trade secrets, confidential business or other proprietary information, including but not limited to,  
10 Bovis' business decisions and decision-making processes and confidential business information  
11 related to its pricing. Bovis will not produce such confidential, business, proprietary information  
12 without the entry of an appropriate protective order.

13 3. Bovis objects to these Interrogatories to the extent that they request information or  
14 documents which are not relevant to this litigation and/or not reasonably calculated to lead to the  
15 discovery of relevant evidence.

16 4. Bovis objects to these Interrogatories to the extent that they are overly broad,  
17 oppressive, unduly burdensome, not reasonably tailored to the facts and issues of this litigation,  
18 and/or meant to harass Bovis.

19 5. Bovis objects to these Interrogatories to the extent that they are vague,  
20 ambiguous, confusing, misleading, incapable of interpretation and/or insufficiently defined.

21 6. Bovis objects to these Interrogatories to the extent they seek Bovis' contentions or  
22 legal positions including, but not limited to, Bovis' contention or legal position regarding the  
23 merit and allegations of the underlying claims, and as overly broad.

24 7. Bovis objects to the Interrogatories to the extent that they seek information  
25 equally or more readily available to MBH from its own records, from other defendants, from  
26 third parties, or that are a matter of public record.

RESPONSES TO INTERROGATORIESSPECIAL INTERROGATORY NO. 1:

For each type of damages, monetary or otherwise, that you claim in this lawsuit, state the following:

- a. type of damages; and
- b. the amount of damages claimed, and explain how the amount claimed was calculated.

RESPONSE TO SPECIAL INTERROGATORY NO. 1:

Bovis objects to this interrogatory as being vague, overly broad and unduly burdensome. Additionally, Bovis objects to this interrogatory to the extent it seeks material protected by the attorney-client privilege and/or work product privilege. Bovis further objects to this interrogatory as it calls for a legal conclusion. Subject to and without waiving these objections or the General and Specific Objections, plaintiff seeks compensatory damages in an amount in excess of \$5 million, presently believed by Plaintiff to have been caused by MBH's breach of the Professional Services Agreement (the "Agreement") between Lennar and MBH and the resulting costs that Lennar has incurred to assess and remediate MBH's inadequate work on the condominium complex located at 200 Brannan Street and One Federal Street in San Francisco, California (the "Project") and for Project delays caused by MBH which increased Lennar's costs to construct the Project. This amount was calculated based on the value of services and materials that Lennar either paid or became liable to pay to third parties for Project delays caused by MBH and to remediate MBH's improper work on the Project. This dollar figure includes the monies paid by Lennar to Bovis for extended General Conditions costs caused by MBH's errors and omissions and the sums paid by Lennar to Bovis involving additional costs incurred by subcontractors arising from MBH's errors and omissions. Because of MBH's errors and omissions, Lennar also incurred costs to correct individual components of the Project, which were determined to be defective and inadequate. These individual components include, but are not limited to, the following items.

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- a. The design team's plans mislocated deep concrete beams in numerous locations;
- b. the design team failed to properly locate the cooling towers and provide the necessary support for mechanical equipment to be installed on the roof system;
- c. the design team failed to properly design and locate the davits for the window washing system;
- d. the design team failed to properly design the project plans to accommodate well-known mechanical equipment and to coordinate structural steel locations with architectural elements at the sawtooth elevation;
- e. the design team's drawings failed to include adequate and glazing, concrete and MEP systems details;
- f. the design team failed to properly design the bathtubs and surrounds in 1 Federal, resulting in a rejection by the City of San Francisco plumbing inspector and the issuance of a correction notice;
- g. the design team's plans and specifications failed to include vestibules in stairways as required per City and Code building requirements;
- h. the design team's specifications required the use of Italian cream marble for the kitchen countertops in 109 units, which resulted in homeowner claims;
- i. the design team specified an improper garage gates given its frequency of use;
- j. the design team specified an improper mews and courtyard gates that failed to meet applicable professional standards;
- k. the design team specified improper penthouse gates that were too heavy, given the design team's selection of the associated materials and hardware, preventing the gates from properly closing;
- l. the design team's plans and specifications specified inadequate range hoods for approximately 19 units;
- m. design team's plans mislocated the soffits in a number of units, which resulted in a correction notice from the building inspector;

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- n. the design team's plans provided no reasonable means for access to the elevator #4 call button;
- o. the design team's plans failed to include the proper dimensions for common walls;
- p. the design team's plans and specifications failed to adequately address acoustical issues at the fitness center and other areas constructed in accordance with the design team's plans and specifications, including at the stairwells and units affected by the garage;
- q. the design team's plans and specifications of Unit 506's bathroom waterproofing detail in the plans was erroneous, resulting in a leak through the waterproofing at the back side of the tub that goes through the wall and appears on the entry foyer wall baseboard;
- r. the design documents issued by MBH lacked door stops on all of the private balcony patio doors;
- s. the design team's plan for Unit 49 specified an inward swinging door, which has resulted in significant leakage into the unit;
- t. the design documents issued by Kwan Hemni, a subconsultant to MBH, lacked the detail necessary regarding the welding for the canopy at One Federal;
- u. the design team's plans and specifications failed to include correct UL wall types as required by the Code and the City of San Francisco;
- v. the design team's original plans and specifications required stainless steel baseboards throughout the common areas that were not in conformance with the fire rating of the walls;
- w. the design team's plan failed to include the necessary patio gate for Unit 504 in order to access the window washing davit;
- x. the design team's plan for the penthouse fireplace designs failed to address back-drafting issues; and

y. the design team's plan for Stair 1A contained inconsistencies relating to the monolithic curb details.

Damages being sought by Plaintiff are subject to further review by Plaintiff and its experts. Plaintiff reserves the right to supplement and/or modify this response as additional information becomes available.

**SPECIAL INTERROGATORY NO. 2:**

Please state the name, employer, address and phone number of each person(s) who has knowledge of the facts set forth in your response to Interrogatory No. 1.

**RESPONSE TO SPECIAL INTERROGATORY NO. 2:**

Subject to and without waiving the General and Specific Objections, Bovis states that the following individuals may have knowledge of specific errors and omissions of MBH on the Project, actions taken to correct such errors and omissions, and costs/damages incurred by Lennar as a result of MBH's errors and omissions:

1. Scott Halfwassen
2. Joseph Almirantearena
3. Gordon Covey
4. John Chiaverini
5. Donald Peterson
6. Nick Sacley
7. Keith McDonnell
8. David Dacus
9. Eric Golangco
10. Michael Hochstoeger
11. Darlene Carpenter
12. Judith Johnson
13. Lynn Bell
14. Thomas Sheaff
15. Lawrence Florin
16. David Gannon
17. Rob Hertzfeld
- Mariposa Management, 55 Florida St. Suite 410, San Francisco, CA 94110
18. Curtis Eisenberger



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- 1 • Mariposa Management, 55 Florida St. Suite 410, San Francisco, CA 94110
- 2 19. Kevin Hanson
- 3 • LNR-Lennar Brannan Street, LLC, 49 Stevenson St, Suite 600, San Francisco,
- 4 CA 94105
- 5 • must be contacted through the undersigned counsel
- 6 20. Greg McWilliams
- 7 • NorCal
- 8 21. Various subcontractors may have additional knowledge of MBH's errors and
- 9 omissions and the resulting delays and increased costs of construction, including,
- 10 without limitation, the following individuals:
- 11 • Don Van Eegen
- 12 i. Marelich Mechanical Co., Inc., 24041 Amador St. Hayward, CA
- 13 64544
- 14 • Keith Attenbury
- 15 i. Marelich Mechanical Co., Inc., 24041 Amador St. Hayward, CA
- 16 64544
- 17 • Andrew Osterowski
- 18 i. Marelich Mechanical Co., Inc., 24041 Amador St. Hayward, CA
- 19 64544
- 20 • Brian O'Leary
- 21 i. Marelich Mechanical Co., Inc., 24041 Amador St. Hayward, CA
- 22 64544
- 23 • Kevin Romak
- 24 i. Romak Iron Works, 380 Industrial Court Benicia, CA 94510
- 25 • Bob Cook
- 26 i. Dynalectric Company, 414 Brannan St. San Francisco, CA 94107
- 27 • Eileen Hrycay
- 28 i. Dynalectric Company, 414 Brannan St. San Francisco, CA 94107
- Dennis Smith
- i. U.S. Glass & Aluminum, Inc., 190 E. Third St. Pittsburg, CA 94565
- Steve Case
- i. U.S. Glass & Aluminum, Inc., 190 E. Third St. Pittsburg, CA 94565
- Tim Blue
- i. Blue's Roofing, 1181 Campbell Ave, San Jose, CA 95126
- KZ Tile Co., 1551 Tennessee Street, San Francisco, CA 94107
- A Touch of Class Painting, Inc./Jerry Thompson Painting, a Joint Venture,
- 870 Market Street, Suite 657, San Francisco, CA 94102

The contact information for the above individuals listed in Nos. 1-16 and 19 – 20 is as set



1 forth in Plaintiff's Rule 26 disclosure statement previously filed with the Court. The above  
2 individuals must be contacted through the undersigned counsel.

3 **SPECIAL INTERROGATORY NO. 3:**

4 Based on the assignment of contractual rights set forth in paragraph 8 of the Complaint,  
5 will Bovis or LNR-Lennar Brannan Street, LLC be responsible for any potential award of a  
6 reasonable sum for attorneys' fees, expert witness and consulting fees, court costs, and all other  
7 costs to MBH in the event that MBH is declared the prevailing party in this action?

8 **RESPONSE TO SPECIAL INTERROGATORY NO. 3:**

9 Bovis objects to this interrogatory as being compound. Bovis objects to this interrogatory  
10 as it calls for a legal conclusion. Subject to and without waiving these objections or the General  
11 and Specific Objections, Bovis states that pursuant to section 8.2 of the Settlement Agreement  
12 executed by Lennar and Bovis previously provided to counsel for MBH, Lennar assigned to  
13 Bovis only its rights and remedies against MBH and each of MBH's subconsultants. Lennar's  
14 obligations to MBH under the Agreement were not assigned to Bovis.

15 **SPECIAL INTERROGATORY NO. 4:**

16 Please state all facts that support your contention that MBH "breached the terms and  
17 conditions of its contract with Lennar thereby causing Lennar to sustain damages in excess of \$5  
18 million" as alleged in paragraph 12 of the Complaint.

19 **RESPONSE TO SPECIAL INTERROGATORY NO. 4:**

20 Bovis objects to this interrogatory as being vague, overly broad and unduly burdensome.  
21 Bovis objects to this interrogatory to the extent it seeks information protected by the attorney-  
22 client privilege and/or work product privilege. Bovis further objects to this interrogatory as it  
23 calls for a legal conclusion. Subject to and without waiving these objections or the General and  
24 Specific Objections, Bovis states that MBH breached the Agreement with Lennar because it  
25 issued incomplete, inaccurate and defective plans and specifications for the Project, including,  
26 but not limited to, MBH's failure to adequately coordinate its plans with plans prepared by  
27 MBH's subconsultants. As a result, MBH's plans were subject to substantial revisions after  
28

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1 construction of the Project was underway, including, without limitation, in excess of fifty  
2 Bulletins. These revisions resulted in increased construction costs, project delays, costs and  
3 remedial repair costs paid for by Lennar. MBH's issuance of defective plans and specifications  
4 also has resulted in various claims brought by individual unit owners and the HOA against  
5 Lennar. Bovis further states that MBH failed to design plans and specifications to meet Lennar's  
6 project guidelines set forth in the Professional Services Agreement, including Exhibit 'B' and  
7 applicable building codes. MBH further breached the terms and conditions of the contract with  
8 Lennar by designating improper and inadequate building materials, including, but not limited to  
9 counter tops, gates, windows, doors, appliances, fireplaces and other building materials used at  
10 the project.

11 Pursuant to the Agreement, MBH was obligated to respond to issued Requests for  
12 Information ("RFI") within a reasonable time, but in no event longer than two weeks. MBH  
13 repeatedly failed to timely respond to RFIs and, consequently, construction delays resulted on  
14 the Project. In addition, MBH's responses to RFIs of various Project participants often were  
15 incomplete and/or non-responsive.

16 The total amount of additional costs incurred by Lennar due to MBH's errors and  
17 omissions presently is believed to exceed \$5 million.

18 Damages being sought by Plaintiff are subject to further review by Plaintiff and its  
19 experts. Plaintiff reserves the right to supplement and modify this response as additional  
20 information is made available.

21 **SPECIAL INTERROGATORY NO. 5:**

22 Please state the name, employer, address, and phone number of each person(s) who has  
23 knowledge of the facts set forth in your response to Interrogatory No. 4.

24 **RESPONSE TO SPECIAL INTERROGATORY NO. 5:**

25 Subject to and without waiving the General and Specific Objections, Bovis incorporates  
26 its answer to Interrogatory No. 2 as if set forth fully herein.

**SPECIAL INTERROGATORY NO. 6:**

Please state all facts that support your contention that MBH "breached the standard of care of architects and/or other design engineers performing contractual design and construction administration services in the San Francisco Bay Area who contracted to provide the design and construction services of the type supplied by MBH" as alleged in paragraph 16 of the Complaint.

**RESPONSE TO SPECIAL INTERROGATORY NO. 6:**

Bovis objects to this interrogatory as being vague, overly broad and unduly burdensome. Bovis objects to this interrogatory to the extent it seeks material protected by the attorney-client privilege and/or work product privilege. Bovis further objects to this interrogatory as it calls for a legal conclusion. Subject to and without waiving these objections or the General and Specific Objections, Bovis incorporates its answers to Interrogatories Nos. 1 and 4 as if set forth fully herein.

**SPECIAL INTERROGATORY NO. 7:**

Please state the name, employer, address and phone number of each person(s) who has knowledge of the facts set forth in your response to Interrogatory No. 6.

**RESPONSE TO SPECIAL INTERROGATORY NO. 7:**

Subject to and without waiving the General and Specific Objections, Bovis incorporates its answer to Interrogatory No. 2 as if set forth fully herein.

**SPECIAL INTERROGATORY NO. 8:**

Please state all facts that support your contention that "each of [MBH's] designs were negligent, defective and below the standard of care in that the plans, specifications, and design and construction administration services were defective" as alleged in paragraph 17 of the Complaint.

**RESPONSE TO SPECIAL INTERROGATORY NO. 8:**

Bovis objects to this interrogatory as being vague, overly broad and unduly burdensome. Additionally, Bovis objects to this interrogatory to the extent it seeks material protected by the attorney-client privilege and/or work product privilege. Bovis further objects to this

interrogatory as it calls for a legal conclusion. Subject to and without waiving these objections or the General and Specific Objections, Bovis incorporates its answers to Interrogatories Nos. 1 and 4 as if set forth fully herein.

**SPECIAL INTERROGATORY NO. 9:**

Please state the name, employer, address and phone number of each person(s) who has knowledge of the facts set forth in your response to Interrogatory No. 8.

**RESPONSE TO SPECIAL INTERROGATORY NO. 9:**

Subject to and without waiving the General and Specific Objections, Bovis incorporates its answer to Interrogatory No. 2 as if set forth fully herein.

**SPECIAL INTERROGATORY NO. 10:**

Please state all facts that support your contention that MBH "breached [its] duty of care to Plaintiff and failed to exercise reasonable care in that [it] performed substandard design, inspection, supervision and planning for the Project" as alleged in paragraph 19 of the Complaint.

**RESPONSE TO SPECIAL INTERROGATORY NO. 10:**

Bovis objects to this interrogatory as being vague, overly broad and unduly burdensome. Additionally, Bovis objects to this interrogatory to the extent it seeks material protected by the attorney-client privilege and/or work product privilege. Bovis further objects to this interrogatory as it calls for a legal conclusion. Subject to and without waiving these objections or the General and Specific Objections, Bovis incorporates its answers to Interrogatories Nos. 1 and 4 as if set forth fully herein.

**SPECIAL INTERROGATORY NO. 11:**

Please state the name, employer, address and phone number of each person(s) who has knowledge of the facts set forth in your response to Interrogatory No. 10.

**RESPONSE TO SPECIAL INTERROGATORY NO. 11:**

Subject to and without waiving the General and Specific Objections, Bovis incorporates its answer to Interrogatory No. 2 as if set forth fully herein.

**SPECIAL INTERROGATORY NO. 12:**

Please state all facts that support your contention that "LENNAR ...has been forced to defend claims and/or allegations arising out of MBH's work at the Project, and has and continues to incur costs and fees in defense of those actions" as alleged in paragraph 24 of the Complaint.

**RESPONSE TO SPECIAL INTERROGATORY NO. 12:**

Bovis objects to this interrogatory as being vague, overly broad and unduly burdensome. Additionally, Bovis objects to this interrogatory to the extent it seeks material protected by the attorney-client privilege and/or work product privilege. Bovis further objects to this interrogatory as it calls for a legal conclusion. Subject to and without waiving these objections or the General and Specific Objections, Bovis states that on May 5, 2007, Lennar was served with a Complaint titled, *Michael Cullen v. LNR-Lennar Brannan Street, LLC, et al.* The class action was brought by Cullen, the named plaintiff, on behalf of the 200 Brannan Owners Association. The complaint alleges, among other things, construction defects, many of which are believed to involve the errors and omissions of MBH and its consultants. Lennar has incurred legal expenses and costs, and experts' fees, to respond to the Cullen Complaint.

In addition, on June 15, 2007, the 200 Brannan Owners Association (the "HOA") issued an SB800 Notice of Commencement of Legal Proceedings (the "Notice") against Lennar. Many of the claims asserted by the HOA involve errors and omissions of MBH and its consultants. Lennar has incurred legal expenses and costs, and experts' fees, to respond to the HOA's claims and individual unit owners' claims which are recoverable from MBH.

**SPECIAL INTERROGATORY NO. 13:**

Please state the name, employer, address and phone number of each person(s) who has knowledge of the facts set forth in your response to Interrogatory No. 12.

**RESPONSE TO SPECIAL INTERROGATORY NO. 13:**

1. Michael Hochstoeger
2. Thomas Sheaff
3. David Dacus



The contact information for the above individuals listed in Nos. 1-3 is as set forth in Plaintiff's Rule 26 disclosure statement previously filed with the Court. The above individuals must be contacted through the undersigned counsel.

**SPECIAL INTERROGATORY NO. 14:**

Please state all facts that support your contention that "BOVIS has been forced to defend claims and/or allegations arising out of MBH's work at the Project, and has and continues to incur costs and fees in defense of those actions" as alleged in paragraph 24 of the Complaint.

**RESPONSE TO SPECIAL INTERROGATORY NO. 14:**

Bovis objects to this interrogatory as being vague, overly broad and unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Additionally, Bovis objects to this interrogatory to the extent it seeks material protected by the attorney-client privilege and/or work product privilege. Subject to and without waiving these objections or the General and Specific Objections, Bovis states that Lennar has tendered claims to Bovis related to the Cullen and HOA matters for legal fees and costs related to defending these claims which involve, in part, errors and omissions of MBH and MBH's consultants. Bovis is not seeking in this action to recover damages from MBH for any damages Bovis itself has incurred including the legal fees and costs Bovis has incurred in defending claims tendered by Lennar to Bovis.

**SPECIAL INTERROGATORY NO. 15:**

Please state the name, employer, address, and phone number of each person(s) who has knowledge of the facts set forth in your response to Interrogatory No. 14.

**RESPONSE TO SPECIAL INTERROGATORY NO. 15:**

Subject to and without waiving the General and Specific Objections, Bovis states that the following individuals may have knowledge:

1. Bruce Berardi
  - Bovis Lend Lease, Inc., 71 Stevenson Street, Suite 800, San Francisco, California 94105
  - Must be contacted c/o undersigned counsel
2. Steve Kemnitzer
  - Bovis Lend Lease, Inc., 71 Stevenson Street, Suite 800, San Francisco,

California 94105

- Must be contacted c/o undersigned counsel
3. Wanda Valencia
- Bovis Lend Lease, Inc., 71 Stevenson Street, Suite 800, San Francisco, California 94105
  - Must be contacted c/o undersigned counsel
4. John Chiaverini
- Bovis Lend Lease, Inc., 71 Stevenson Street, Suite 800, San Francisco, California 94105
  - Must be contacted c/o undersigned counsel

**SPECIAL INTERROGATORY NO. 16:**

Please state all facts that support your contention that "work carried out by [MBH] at the Project was negligently designed, inspected, supervised and planned" as alleged in paragraph 28 of the Complaint.

**RESPONSE TO SPECIAL INTERROGATORY NO. 16:**

Bovis objects to this interrogatory as being vague, overly broad and unduly burdensome. Additionally, Bovis objects to this interrogatory to the extent it seeks material protected by the attorney-client privilege and/or work product privilege. Bovis further objects to this interrogatory as it calls for a legal conclusion. Subject to and without waiving these objections or the General and Specific Objections, Bovis incorporates its answers to Interrogatories Nos. 1 and 4 as if set forth fully herein.

**SPECIAL INTERROGATORY NO. 17:**

Please state the name, employer, address and phone number of each person(s) who has knowledge of the facts set forth in your response to Interrogatory No. 16.

**RESPONSE TO SPECIAL INTERROGATORY NO. 17:**

Subject to and without waiving the General and Specific Objections, Bovis incorporates its answer to Interrogatory No. 2 as if set forth fully herein.

**SPECIAL INTERROGATORY NO. 18:**

Please state all facts that support your contention that "Plaintiff was without active fault, culpability or negligence" as alleged in paragraph 30 of the Complaint.



**RESPONSE TO SPECIAL INTERROGATORY NO. 18:**

Bovis objects to this interrogatory as being vague, overly broad and unduly burdensome. Additionally, Bovis objects to this interrogatory to the extent it seeks material protected by the attorney-client privilege and/or the work produce privilege. Bovis further objects to this interrogatory as it calls for a legal conclusion. Subject to and without waiving these objections or the General and Specific Objections, Bovis states that the matters complained of in this lawsuit are attributable solely to MBH and its consultants, not to Bovis.

**SPECIAL INTERROGATORY NO. 19:**

Please state the name, employer, address and phone number of each person(s) who has knowledge of the facts set forth in your response to Interrogatory No. 18.

**RESPONSE TO SPECIAL INTERROGATORY NO. 19:**

Subject to and without waiving the General and Specific Objections, Bovis states that the following individuals may have knowledge of specific errors and omissions of MBH on the Project, actions taken to correct such errors and omissions, and costs/damages incurred by Lennar as a result of MBH's errors and omissions:

1. Scott Halfwassen
2. Joseph Almirantearena
3. Gordon Covey
4. John Chiaverini

The contact information for the above individuals listed in Nos. 1-4 is as set forth in Plaintiff's Rule 26 disclosure statement previously filed with the Court. The above individuals must be contacted through the undersigned counsel.

**SPECIAL INTERROGATORY NO. 20:**

Please state all facts that support your contention that "if it can be found that the Plaintiff was negligent under the claims, ... the negligent conduct of the Defendants ... was active, primary and affirmative, and the negligence of the Plaintiff, if any, was passive, derivative and secondary only" as alleged in paragraph 32 of the Complaint.

**RESPONSE TO SPECIAL INTERROGATORY NO. 20:**

Bovis objects to this interrogatory as being vague, overly broad and unduly burdensome. Additionally, Bovis objects to this interrogatory to the extent it seeks material protected by the attorney-client privilege and/or work product privilege. Bovis further objects to this interrogatory as it calls for a legal conclusion. Subject to and without waiving these objections or the General and Specific Objections, Bovis incorporates its answers to Interrogatories Nos. 18, 1 and 4.

**SPECIAL INTERROGATORY NO. 21:**

Please state the name, employer, address and phone number of each person(s) who has knowledge of the facts set forth in your response to Interrogatory No. 20.

**RESPONSE TO SPECIAL INTERROGATORY NO. 21:**

Subject to and without waiving the General and Specific Objections, Bovis incorporates its answers to Interrogatories Nos. 19 and 2.

**SPECIAL INTERROGATORY NO. 22:**

Please state all facts that support your contention that MBH "breached their standard of care to Plaintiff and failed to exercise reasonable care in that they performed substandard work regarding the design and construction administrative services for the Project according to design specifications, applicable building codes and industry standards" as alleged in paragraph 36 of the Complaint.

**RESPONSE TO SPECIAL INTERROGATORY NO. 22:**

Bovis objects to this interrogatory as being vague, overly broad and unduly burdensome. Additionally, Bovis objects to this interrogatory to the extent it seeks material protected by the attorney-client privilege and/or work product privilege. Bovis further objects to this interrogatory as it calls for a legal conclusion. Subject to and without waiving these objections or the General and Specific Objections, Bovis incorporates its answers to Interrogatories Nos. 1 and 4 as if set forth fully herein.

1 **SPECIAL INTERROGATORY NO. 23:**

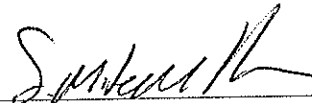
2 Please state the name, employer, address and phone number of each person(s) who has  
3 knowledge of the facts set forth in your response to Interrogatory No. 22.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 23:**

5 Subject to and without waiving the General and Specific Objections, Bovis incorporates  
6 its answer to Interrogatory No. 2 as if set forth fully herein.

7  
8 DATED: March 13, 2008

GORDON & REES, LLP

9 By 

S. Mitchell Kaplan

Attorneys for Plaintiff

BOVIS LEND LEASE, INC. as assignee of  
LNR-LENNAR BRANNAN STREET, LLC

GORDON & REES, LLP  
ATTORNEYS AT LAW  
EMBARCADERO CENTER WEST  
275 BATTERY STREET, TWENTIETH FLOOR  
SAN FRANCISCO, CA 94111

VERIFICATION

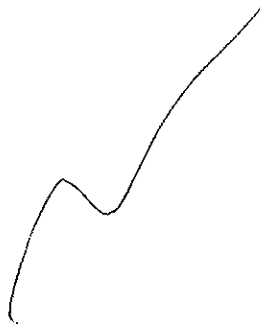
I, Bruce Berardi, Principal in Charge of Bovis Lend Lease, Inc.'s office located in San Francisco, CA, being first duly sworn, state that the Answers to Defendant MBH Architect's First Set of Special Interrogatories were prepared with the assistance and advice of counsel upon whose advice I have relied; that the responses set forth therein, subject to inadvertent or undiscovered errors, are based on and therefore necessarily limited by the records and information still in existence, presently recollected and thus far discovered in the course of preparation of these responses; that consequently Bovis Lend Lease, Inc. reserves the right to supplement and to make changes to its responses, without admitting any duty to do so, if it appears at any time that omissions or errors have been made therein or that more complete or accurate information is available; that subject to the limitations set forth herein the responses are true to the best of my knowledge, information and belief.

  
Bruce Berardi

Subscribed and Sworn to  
before me this \_\_\_\_ day of  
March, 2008.

\_\_\_\_\_  
Notary Public

*See attached*



**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

- ☒ See Attached Document (Notary to cross out lines 1-6 below)  
☐ See Statement Below (Lines 1-5 to be completed only by document signer[s], *not* Notary)

~~\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_~~

Signature of Document Signer No. 1                      Signature of Document Signer No. 2 (if any)

State of California

County of San Francisco

Subscribed and sworn to (or affirmed) before me on this

13<sup>th</sup> day of March, 2008, by  
Date                      Month                      Year

(1) Bruce Berardi  
Name of Signer

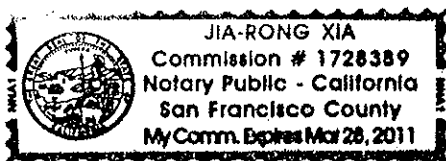
proved to me on the basis of satisfactory evidence  
to be the person who appeared before me (.) ☒

(and

(2) \_\_\_\_\_  
Name of Signer

~~proved to me on the basis of satisfactory evidence  
to be the person who appeared before me.)~~

Signature Jia Rong Xia  
Signature of Notary Public



Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove  
valuable to persons relying on the document and could prevent  
fraudulent removal and reattachment of this form to another document.*

**Further Description of Any Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**RIGHT THUMBPRINT  
OF SIGNER #1**  
Top of thumb here

**RIGHT THUMBPRINT  
OF SIGNER #2**  
Top of thumb here

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon & Rees LLP 275 Battery Street, Suite 2000, San Francisco, CA 94111. On March 13, 2008, I served the within documents:

**BOVIS LEND LEASE, INC.'S ANSWERS TO MBH ARCHITECT'S FIRST SET OF SPECIAL INTERROGATORIES**

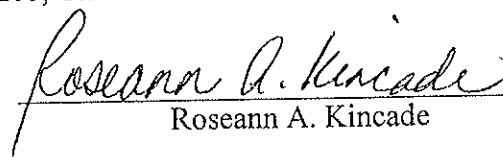
- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Francisco, addressed as set forth below.

Jennifer A. Becker, Esq.  
Long & Levit  
465 California Street, 5<sup>th</sup> Floor  
San Francisco, Ca 94014  
(415) 397-2222  
(415) 397-6392 (FAX)

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 13, 2008, at San Francisco, California.

  
Roseann A. Kincade

Gordon & Rees LLP  
275 Battery Street, Suite 2000  
San Francisco, CA 94111